

Implications of Copyright Protection to Distance Education in Tanzania: An Appraisal of the Copyright and Neighbouring Rights Act, 1999

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Abstract

This paper examines the implications of copyright protection to distance education in Tanzania. The significance of copyright to distance education is exposed and the Copyright and Neighbouring Rights Act 1999 is examined and appraised as to the extent to which it permits distance education use of copyrighted materials without obtaining the copyright owner's permission. The paper argues that the statutory exemptions under the Act are neither elaborate nor specifically set for education and in particular distance education use of copyrighted materials, hence uncertainties as to the extent to which the exemptions may be applied for distance education purposes. The paper suggests that there is a need to ameliorate the Act with a view to facilitating and promoting distance education whilst maintaining an appropriate balance between the rights of both copyright owners and users. A deliberate emphasis needs also be placed in arousing copyright awareness among distance educators.

Introduction

This paper is about the copyright issues in distance education in Tanzania. The paper will examine the opportunities and limitations offered by the new Copyright and Neighbouring Rights Act, 1999

in enhancing the provision and delivery of distance education at tertiary level through the Open University of Tanzania.

The paper has five parts. It begins with a brief background of distance education in Tanzania, this is followed by the significance of copyright law in distance education, the implications of the Copyright and Neighbouring Act; and lessons from other countries will also be discussed. The paper ends with conclusions and recommendations.

Distance Education in Tanzania: A Historical Overview

Distance education is emerging as a significant component of life long education and training in Tanzania. It is considered to be an important alternative delivery system of educating and training a large segment of the population at less cost as compared to conventional education system. In Tanzania the demand for higher education continues to outstrip the supply of school physical and human resources. The revolution brought by new technologies at a working environment is demanding new patterns of re-skilling and reorganization of the work force. Thus workers are compelled to acquire new skills needed to cope with the changing working environment. However, due to the nature of some jobs, a large number of workers cannot afford to leave their daily activities to attend schools on full time basis. Distance education, due to its flexibility, extends the opportunities to those who cannot afford to

sit in class full time.

The history of distance education in Tanzania can be traced as far back as to the pre-independence period. According to the report of the Committee on the establishment of an Open University of Tanzania, distance education was introduced in 1949 by foreign institutions like the British Tutorial College. These were to provide educational and professional training to the children of the colonial officers and a few nationals seeking to upgrade their skills (URT 1990). Other institutions of distance education nature were created in the sixties and early seventies. The institutions were the Co-operative Education Centre (CEC) situated in Moshi - Kilimanjaro and National Correspondence Institution (NCI) of the Institute of Adult Education in Dar es Salaam. The Co-operative Education Centre was established for the purpose of educating members of primary co-operative societies as to their rights, duties and responsibilities and equipping employees of primary societies with knowledge and skills they require to perform their duties efficiently. In the same line the National Correspondence Institution (NCI) was established in 1970 in order to:

- equip Tanzanians with knowledge and skills they need to meet the manpower needs of the country;
- to help Tanzania's understand the nation's policies and thereby be prepared to participate more fully in carrying out national

policies and programmes; and

- supplement efforts being made by the leaders and adult educators in various governments departments to bring about economic and social development in the rural areas (Mushi 1999:85).

It is worth noting that, both CEC and NCI did not provide higher education programmes; and their mode of delivery was mainly print supplemented by radio broadcasts aired through the National Service of Radio Tanzania, Dar es Salaam. However, it is not clear whether copyright issues which were regulated by the copyright Act 1966 were of any concern to these institutions.

The Copyright Act 1966 was enacted to repeal and replace the Copyright Ordinance (Cap.218 of the Laws of Tanzania) which made the United Kingdom Copyright Act 1911 applicable in the then Tanganyika. The objective for this enactment was to replace the law applicable by then as it was not suitable to the needs of Tanzania because it imposed very stringent obligations on the country, while her own output of literary and artistic works was too small to justify retention of sophisticated English legislation (Rwezaura, 1987; Mnyele, 1996). The Copyright Act 1966, now repealed, defined copyright under section 7 as a right to control the doing in Tanganyika of any reproduction in any material form, the communication to the public and the broadcasting of the whole

work or substantial part thereof either in its original form or any form recognisably derived from the original of the protected work (Mnyele, 1996:86). A proviso to section 7(1) provided a comprehensive list of circumstances under which the right to control copying could be applicable. These included reproduction, communication, and broadcasting of a protected work by way of fair dealing for purposes of research, private use criticism or review, or the reporting of current events if any public use of the work was accompanied by an acknowledgement of its title and authorship except where the work was incidentally included in a broadcast. A detailed examination of the Act and its application is however beyond the scope of this paper.

The Open University of Tanzania (OUT) is at present the only higher learning institution in the country which offers its degree programmes through distance education methods. Their mode of delivery is still print which is supplemented by audio-video cassettes, and to a limited extent by computer, though the Open University of Tanzania Act of 1992 (Act No.17 of 1992) clearly and unambiguously envisages the use of various means, including the broadcasting and other appropriate technological devices.

Although copyright is an essential component in distance education, neither the report for the establishment of the Open University of Tanzania (URT, 1990) nor the Act, which established OUT, has addressed the issue.

Copyright and its Significance to Distance Education

Copyright may be described as the right to control copying or reproduction by others of some kinds of more developed materials which have been put into concrete form or given tangible expression. It covers not only original literary works but also many other creative works including music, recordings, films, art, sculpture and photograph (Owen, 1997:2).

Under section 4 of the Copyright and Neighbouring Rights Act, 1999, *copyright* is defined to mean the sole legal right to print, publish, perform film or record a literary or artistic or musical work. On the other hand Jones (1996:11) aptly defines copyright as:

The exclusive statutory right, given (usually) to those who create original works, to exercise control for a specified period of time over the copying and other exploitation of those works.

Copyright, as a concept, does not protect ideas unless they are expressed in such manner that can be shared the rest of the world. This does not however give a monopoly to any form of words or design. Referring to Sargant, J. in *Corelli v. Gray* (1913) 29 T.L.R 570, Skone James (1971:3) illustrates the point as follows:

If it could be shown that two precisely similar works were in fact produced wholly independently of one another, the author of the work that was published first would have no right to restrain the publication by the other author of that author's independent and original work.

The purpose of copyright law is to protect the creators of works from unlawful reproduction of their materials and to fund further creativity. Its presence and operation encourage authors to continue creating new works without fear of having their works stolen or misused. It tries as well to ensure that some access to copyrighted work is allowed as without this access creators would be starved of ideas and information to create more copyrighted materials (Cornish, 1990: ix). This respect is essential in so far as maintenance of balanced and regulated flow of knowledge is concerned.

Although copyright is an issue for all teaching situations, it is of much concern to distance education because of its technical nature which makes it to be accessible to wider audiences covering all segments of population than the conventional education carried out behind closed doors (Willis, 1994:234). Different delivery technologies now used in distance education, including traditional media, increase the chances of abuse of copyright privileges.

Thus, the challenge on the part of distance education institutions like the Open University of Tanzania is that of providing quality instructional materials for its consumers whilst complying at the same time with copyright requirements. Therefore, before production and distribution of any distance education material strict compliance with existing copyright laws should be done. This means that copyright matters ought to be considered prior to material delivery in order to avoid controversy, and thus copyright litigation.

In light of the above, it is noteworthy that the extent to which the copyright laws will permit a limited use of copyrighted materials for distance education is very central to the enhancement and development of distance education which is increasingly becoming a vibrant and burgeoning field. It is obvious for this reason that, the need to ameliorate copyright laws specifically to address distance education issues is imperative and has in fact been recognised in some countries so is the need to provide technical security for copyrighted works in the digital environment.

In so far as Tanzania is concerned, the basic issue is whether and to what extent the Copyright and Neighbouring Rights Act of 1999 which was preceded by the establishment of a distance education university in Tanzania is well suited in enhancing, promoting and developing distance education in Tanzania.

The Legal Protection of Copyright in Tanzania: Salient Features of The Copyright Act, 1999

The Scope of the Act

In Tanzania copyright is protected and regulated by the Copyright and Neighbouring Rights Act of 1999 (hereinafter called the Copyright Act). The Copyright Act, 1999 repeals and replaces the Copyright Act, 1966 with the object of making;

better provisions for protection of copyright and neighbouring rights in literary, artistic works and folklore and for related matters thereto.

Under the Copyright Act a work does not qualify for copyright protection unless it meets certain qualifying criteria. A work may qualify by virtue of its author or the country in which the work was first published. Under section 3 of the Copyright Act, the work qualifies for protection if its author is a national of Tanzania or is a person having his habitual residence in Tanzania. Likewise, a work qualifies for protection if it was first published in Tanzania, irrespective of the nationality or residence of the author.

Works first published in a foreign country which grants similar protection to residents or nationals of Tanzania also, enjoy protection under the Copyright Act. Such protection also extends to unpublished works of authors of foreign nationality where their

country of habitual residence grants similar protection to nationals or residents of Tanzania (section 3 (6)).

Section 5 of the Copyright Act gives a very comprehensive list of categories of literary and artistic works whose authors are entitled to copyright protection by virtue of creating such works. The works as enumerated under section 5 (e) of the Copyright Act include:

- books, pamphlets and other writings, including computer programmes;
- lectures, addresses, sermons and other works of the same nature;
- musical works;
- cinematographer works and other audio-visual works and
- illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

It is only *original* works that are entitled to copyright protection. An exception to this rule is afforded by Section 6 of the Act, which enumerates a special category of works, which ought to be protected as if they were original works. These include translation, adaptations, arrangements and other transformation of literary and artistic works.

In spite of the originality requirement, however, the Copyright Act does not define the term *original* for the purposes of copyright protection. Jones (1996:19-20) explains what constitutes *original*

in copyright law in the following words:

For the purposes of copyright law, all that original means is that the work concerned should originate from the author: in other words, that he or she should not have copied it from anywhere else. Any evidence that you have saved yourself time and effort by copying slavishly from someone else will rob your work of its originality and thus of its copyright protection. However, it does not need to display what we may think of colloquially as original thought, in the sense of unique perception or insight which no-one else has contributed to the subject before. It is quite permissible to base your work entirely on common sources and existing material (provided you do not copy them)- the originality which is required is not so much original thought as original effort: an independent work which (however mundane or derivative) you have used your own time and effort, and your own faculties and skill to create.

It is thus permissible for an author to base his work entirely on common sources and existing materials so long as he does not copy them.

Exclusive Rights of Copyright Owner

The copyright Act also vests the authors of protected works certain exclusive rights. In addition to economic rights, for instance, the exclusive right to carry out or to authorise such acts like reproduction, distribution, exhibition, translation, adaptation and broadcasting in relation to the work, the authors have under section 11 of the Act exclusive personal statutory rights relating to their works and their reputation called *moral rights*. The Act enacts only two moral rights, which are replica of those provided for under article 6 of the Berne Convention, which Tanzania is a part. These rights are: first, the right to claim authorship of the work. This gives the author of a protected work the right to be identified as the author of the work. The second is the right to object to distortions, mutilation or other derogatory treatments of the work, which would prejudice the author's honour or reputation. This gives the authors the right not to have their work subjected to derogatory actions.

Unlike the economic rights which may be exercised by copyright owner, licensed, assigned, transferred or given away in whole or part, moral rights remain attached to the author personally or the author's estate, even if the copyright is later assigned to someone else such as a publisher.

Duration of Protection

Under the Act, copyright and thus the authors' exclusive rights run

for fifty years (50) from the end of the year in which the author died. This is a minimum requirement under the Berne Convention. In case of a work of joint authorship, the exclusive rights will extend up to 50 years since the death of the last surviving author. Audio visual works and works published anonymously enjoy protection for fifty years from the date such work were made (section 14(3)&(4)).

Civil and Criminal Remedies Against Infringement

Any person uses any of the protected rights under section 9 of the Act to the relevant work without the license of the copyright owner will have infringed copyright in the work, unless one of the statutory exceptions applies.

Infringement may be direct which consists of the unauthorized exercise by persons not being the copyright owner of the rights protected under the Act; and indirect infringement which consists of unauthorized dealings with works which are themselves direct infringements or unauthorized importation (Skone James, 1971:172). In distance education context, infringement may occur in two flavours. The first is the infringement of the author's copyright in distance education materials and the second is the infringement by the authors of distance education of another's copyright. However, as above discussed an action for infringement will only occur if the work was fixed in tangible form. The Act

provides for both civil and criminal sanctions against infringement.

Actions for Injunction and Damages

These are among the civil remedies against infringement provided for under the Act. In this regard, an author whose rights are in imminent danger of being infringed or have already been infringed may under section 36 of the Act institute a civil action seeking two remedies:

The first is injunction to prevent infringement or to prohibit the continuation of infringement.

The Second is payment of damages suffered, including any profit enjoyed by the infringer which are attributable to the infringement. It is not necessary in order to win an action for copyright infringement to prove financial (or any other loss). This is because, if infringement is proved, some damages will be assumed. The basic aim, seemingly, is to restore the plaintiff to the position he would have been in had the infringement not happened (Jones, 1996: 213).

Where an act of infringement complained of was neither intentional nor negligent, the injured party (copyright owner) would be entitled from the infringer damages equal to the remuneration he would otherwise have obtained as if there was a contract between them. This applies only where the damages which the infringer may get

if such orders as to injunction, destruction or delivery of the infringing equipment would be disproportionate to that which the copyright owner has actually suffered.

Right of Destruction and Other Similar Measures

In addition to the above remedies, the injured party may under section 38(1) require that all copies that were unlawfully manufactured, distributed or which are intended for unlawful distribution be destroyed. Along side, equipment that was used in production and distribution of the works may as well be required to be destroyed or rendered unusable. Normally, the rights under section 38 (1) of the Act are exercised by the copyright owner by filing an application in court for what is normally known in copyright law as an *Anton Piller* application. Such application which owes its origin from the case of *Anton Piller K.G. v. Manufacturing Processes Ltd* [1976] Ch.55 normally prays for entering and searching the defendant's premises used for pirating activities and impounding therefrom any infringing materials, including all such equipment as are used for infringement.

Besides, the injured party has the right to require delivery of the copies and equipment in whole or in part for an equitable price, which should not exceed the production cost. An enterprise may, under section 40 of the Act, be held responsible for infringement occasioned by its employee or agent in the course of his duties to

the enterprise. It is worth noting that the injured party's claim against an enterprise responsible for infringement is restricted to claims other than the right to damages. The Act does not, however, explicitly address the question of ownership of copyright when an employee or agent creates a work in the course of his duties to his employer or enterprise. The best approach in this regard is to have written agreement which unambiguously settles the ownership questions.

Statutory Exemptions for Free use of Copyrighted Material

Most copyright laws envisage provisions whose implication is to limit the copyright owner's monopoly by reserving to others the right to make reasonable uses of copyrighted work without specific consent of the author and payment of remuneration for the use (Willis, 1994:234). Such uses have often included reproduction of portion of work for instance for the purposes of criticisms, comment, news reporting, non-profit education use or research. The concept is envisaged in such provisions is in the United States of America referred to as *fair use*, whilst in the United Kingdom, Canada and other nations is called *fair dealing*. However, the concept has never been accorded an explicit statutory definition due to the vast range of kinds of copyright material and modes of use (Jones, 1996:199, Wall, 1993:75). In developed countries, the concept has proved to be complex and a source of confusion as what may be fair depends on circumstance of each case. This draw

back is exacerbated by the context of new technologies where little case law is available. It has elsewhere been argued that 'fair use' as used and applied in the United States of America is a narrower term than 'fair dealing' and that the two should not be used as equivalents (Wall, 1993:75).

In Tanzania, the concept is reflected under section 12 of the Act, though there is no explicit and direct mention of the *fair use* or *fair dealing* other than the phrase *free use* used in the marginal note to section 12 and the *fair practice* used under section 12(9) (b) and (c) of the Act. By virtue of section 12 (1) the phrase *free use* refers to such uses of a protected work either in the original or in translation which are permissible without authors' consent and the obligation to pay remuneration for the use of the work. Although the phrase *free use* might be seen easier to comprehend, it is in a way misleading as it tends to make the users perceive that they have a wholesale licence to copy freely which is not the case. It is unclear why the legislature has opted to depart from its previous approach as reflected under the repealed Copyright Act 1966 in which the phrase *fair dealing* was used.

Section 12 of the Copyright Act provides several somewhat limited exceptions to copyright infringements, designed to cover activities which are regarded as permissible under the general heading of '*free use*'. It would be a complete defence to any claim of copyright infringement to establish that the activity complained of was in

fact among the permitted acts under section 12 of the Act.

The first among such exemption is found under section 12(2)(a) of the Act which permits a user to reproduce, translate, adapt, arrange or transform copyrighted materials for his own personal and private use.

The second is provided for under section 12(2) of the Act. This provision permits the inclusion of quotation from a copyrighted material into another work.

The third category of permitted use is under section 12(2)(c) of the Act. This permits the use of copyrighted materials in publications, broadcasts and programmes distributed by cables or visual recording for teaching purposes in schools, universities and other educational institutions.

Other uses include the use of works on current economic, political or religious topics; and production of copyrighted materials by public libraries, non-commercial documentation centres and scientific and educational institutions.

However, the exemptions are not absolute by themselves, as one has to comply with certain requirements so as to qualify for exemption to copyright infringements.

In so far as section 12(2)(a) is concerned the use, for instance

copying, must be for the user's own personal and private use. Additionally, the reproduction or copying, for that matter, must not conflict with *normal exploitation* of the work, nor should it *unreasonably prejudice the legitimate interests of the author*. This is a very important requirement to note when dealing with copyrighted materials for one's private use. It will be infringement if, for example, a person copies the entire work and claims that he/she did so for his/her own personal use. That will, seemingly, be unreasonably prejudicing the legitimate interest of the author.

With regard to section 12(2)(b) of the Act, which permits the inclusion of a quotation from a copyrighted work in another work, the user has to include such quotation in a manner that is compatible with *fair practice* and should not exceed that justified by purpose. Equally important, the source and name of the author should also be disclosed. This is as well expected to be used reasonably otherwise it will be infringing other protected work or the work may lose originality if it is paraded by mere quotation. *Fair practice* is however not defined, though it is one of the essential pre-requisites in this exemption.

It is also a requirement under section 12(2)(c) of the Act, which provides for the use of copyrighted materials in publication, broadcasts and programmes distributed by cable that the use must be compatible with *fair practice*. Nevertheless, the use, which ought to disclose source and name of the author of copyrighted

materials, must be solely for teaching purposes in schools, universities and other educational institutions.

Application of Statutory Exemptions to Distance Education in Tanzania: Is it Possible or Permissible under the Copyright Act of 1999?

Having reviewed briefly the copyright exemptions under the Copyright Act, 1999, it is important at this stage to consider whether the exemptions cover distance education use of copyrighted materials and if the answer is in the affirmative and to what extent.

Although the Act does not enact specific provisions stipulating for education and in particular distance education use of copyrighted materials, the existing exemptions to a certain extent permit the use of copyrighted materials in distance education. The extent to which the exemptions may be utilised to enhance distance education depends much on the interpretations that may be accorded to the various requirements embedded in the statutory exemptions. The problem, however, is that at present there is a lack of legal interpretation and case law for distance education applications.

Under section 12(2)(b) of the Act for instance the reproduction of the copyrighted material must be for *inter alia* the *users own personal and private use* and should not conflict with the *normal exploitation of the work*. In context, however, this provision is

only limited to personal activities (such as copying) rather than acts taken collectively. Jones (1996:199-200), while commenting on similar provisions under the UK copyright law observes:

It will almost certainly *not* be fair dealing if a librarian or a teacher makes multiple copies on behalf of an entire class of students - even if individually in private study; this was confirmed as long ago as 1916 in the leading case of *University of London Press Ltd. v. University Tutorial Press Ltd.*, where the clear motive was not individual or personal, but a collective motive to save the users (examination candidates) from buying the original works themselves.

The scope of application of this exemption to distance education will depend on the interpretation given to the *users own personal and private use* in the distance learning context.

It is submitted that in view of the significant difference between the distance education and the conventional education system, it is unclear whether making multiple copies on behalf of entire class of distance education student is fair under the circumstance. It is important to note however that whatever interpretation given to the phrase ... *personal and private use* the truth remains that this exemption may be used by distance educators in preparation of

distance education materials. It may as well be of benefit to students who may in course of their studies copy some materials for their private use. In such use, however students and distance educators as well must also be guided by the principle that the use must not conflict with the *normal exploitation of the work*. The phrase is not defined in the Act, but it could seemingly be taken to mean those dealings with the copyrighted materials that are taken as not unreasonably prejudicing the interests of copyright owners. It is worth noting that, unlike in other jurisdictions like the UK, the phrase *...users own personal and private use* does not explicitly provide for the use of copyrighted materials for research purposes (Wall, 1993:78). It is unclear whether the phrase is as well intended to accommodate research, which as a matter of fact needs not be private. In the UK, the phrase unambiguously reads *research or private study*.

Section 12(2)(c) of the Act envisages the use by distance education institutions of copyrighted materials in publications and programmes distributed by cables or visual or sound recording for teaching purposes. The extent to which copyrighted materials may be used depends on what would constitute *fair practice* cable transmission of copyrighted materials for distance education use.

Although not defined under the Act, it is taken that, by teaching as used in the provision under the Act includes teaching in distance education, so is also the case with schools, education and

universities.

It is equally important to note that section 12 (3) of the Act contradicts the spirit envisaged under section 12 (1) & (2) of the Act. Section 12 (3) envisages the physical classroom requirement which limits the use by distance education of copyrighted materials in teaching programmes distributed by cables. For matter of clarity, the sub-section permits the use of protected work in programmes distributed by cable transmission under the following situation:

Section 12(3) The distribution by cable or any work broadcast where the beneficiaries of the distribution by cable *live in the one and the same building or group of buildings none of which is separated from another building by a public street or road* if the cable distributed originated from the same building or group of building and the distribution by cable is done without gainful intent.

In other jurisdictions a number of factors are applied to determine whether use of copyrighted materials is 'fair use' or 'fair dealing' (Willis, 1994:237-238; <http://www.uncg.edu/cha/UNIVERSITY-COUNSEL/FAQ/distlm.html>).

These factors are:

- (i) The purpose and character of the use, including spontaneity

and whether such use is of a commercial nature or is for none profit educational purposes.

- (ii) The nature of copyrighted work (Is it highly creative or just a rendition of facts?)
- (iii) The amount and substantiality of the portion used in relation to the copyrighted work as a whole (Did you copy the whole article or book chapter?); and
- (iv) The effect of the use upon the potential market for or value of copyrighted material (Will the people just read your copy rather than buy the original?).

Alongside the above factors, there have been attempts by learning institutions including publishers to develop copyright or fair use guidelines with which a person can reproduce copyrighted materials without infringement of copyright. Although the guidelines have been criticised for being restrictive, in the US, for example courts have tended to rely heavily on such guidelines in determining cases involving infringement of copyrights in the creation of course materials for college students (<http://www.uncg.edu/cha/UNIVERSITY-COUNSEL/FAQ/distlm.html>). The Open University of Tanzania has purportedly followed this trend by issuing a guide to authors writing distance education materials. Since the guide is not solely devoted to copyright aspects in distance education, it

inadequately addresses the subject and it is therefore not sufficient to guide authors to comply with copyright requirements.

At present the inadequacy or adequacy of the Copyright Act may not be felt as distance education is yet to use modern technologies as medium of delivery.

It is most probable that a great deal of confusions might arise once such new technologies are applied in distance education as the existing law does not adequately address anticipated forms of distance education using such modern technologies as for instance, digital technology. As the US Registrar of copyrights observed in her statement before the committee on the judiciary United States Senate:

Different copyrights are implicated by different educational activities, depending in part on the technologies used. When a performance or display of a work is accomplished by means of a digital network transmission, temporary RAM* copies are made in the computers through which the material passes, by virtue of the technological process. As a result, not only the rights of public performance or display are implicated, but also the rights of reproduction and/or distribution. This does not mean that the use is necessarily an infringement

(Committee on Judiciary, 106th Congress, 1st Session, May 25th, 1999).

The problem might further be aggravated by the fact that new technologies not only make it easy for distance education to perform tasks which are not always considered fair use but also make it very easy to abuse copyright privileges. Willis (1994:234) aptly writes:

Technology makes it very easy ... to abuse copyright privileges. One must top to consider that an act considered to be fair use in a classroom setting may change into something else, i.e. a public performance, when removed from that setting making such usage 'unreasonable' and 'not fair'.

The perception, then, that anything copied for educational application is considered to be fair use and thus legal is not correct.

* Ram is a type of memory used in computers and microprocessors which may be written to and read from. It allows direct independent access to any stored data. It is a computer working area in which programmes are loaded into before they are run (whitecomb, 1992:142)

Licence to use Copyrighted Works

Licence is another means available under section 17 of the Copyright Act whereby on application by an interested party, author of copyrighted material may grant in writing exclusive or non-exclusive licence to the party to carry out certain specific acts covered by the author's economic rights. The scope of the licence however will only cover the economic rights specifically mentioned in the agreement. Save where the agreement stipulates otherwise, the validity of the licence lasts for fifteen (15) years since its conclusion. This is an important tool with which copyright owners may give permission to the use of their works which exceeds fair use. It is another means therefore of obtaining permit for the use of copyrighted works apart from the statutory exemption although it is in itself not free from problems. Many educational institutions in other jurisdictions describe recurrent problems with licensing for distance education, primarily involving among other things difficulties in identifying, locating, and contracting copyright owners on one hand and inability to obtain a response or timely response, or unreasonable prices or other terms. Under such circumstances, it is almost impossible to obtain the permission of the copyright owner to use copyrighted material in distance education.

The United Kingdom and United States of America Experiences

In other jurisdictions copyright laws have gone to the extent of incorporating stand alone provisions for education use of copyrighted materials. The United Kingdom Copyright Act, 1998, for instance, among other things provides somewhat limited exception to copyright infringement designed to cover activities which are regarded as permissible under the general heading of education. The activities covered include things done for the purposes of instruction or examination, anthologies designed for educational use, performing and recording by educational establishment and reprographic copying. Although these categories of permitted educational use are narrowly defined under the Act they serve to reduce or avoid controversy and interpretation confusion that would otherwise have arisen.

The United States of America is another worthwhile example. The United States of America copyright statute of 1976, apart from the fair use provision, it contains instructional exemptions for the purposes of distance education use of copyrighted materials. The exemption covered forms of distance education that existed when the statute was enacted in 1976. At present, in the United State of America, with increasing use of digital technology to distance education, consideration for the reform of the law with a view to promoting distance education while maintaining an appropriate

balance between the rights of copyright owners and the needs of the users of copyrighted works is in process.

Conclusion and Recommendations

The paper sought to examine the implications of copyright protection to distance education. In so doing, the significance of copyright to distance education was exposed and the current copyright Act which was enacted about six years since the enactment of the Open University of Tanzania Act of 1993, was examined and appraised as to the extent to which it permits distance education use of copyrighted materials without obtaining the copyrights owner's permission.

The discussion makes it apparent that the statutory exemptions under the Act are neither elaborate nor specifically set for education and in particular distance education use of copyrighted materials. Thus the extent of application of such exemptions to distance education is uncertain as it depends much on interpretations that may be accorded to various requirements that are embedded in the exemptions.

Amelioration of the Copyright Act is therefore imperative and the only opportunity to introduce legal and regulatory machinery that will enhance and promote distance education whilst at the same time protecting rights of copyright owners and the needs of users

of copyrighted works.

Thus reforms should provide for specific statutory exemptions to copyright infringements designed to cover activities which will be regarded as permissible under the general heading of education use which should incorporate distance education.

Whatever amelioration might be effected, it must envisage the various technologies available and applied in delivery of distance education e.g. digital technology, whilst at the same time maintaining an appropriate balance between the rights of both copyright owners and users of protected works. Elements of physical classroom requirement which are envisaged in the Copyright Act should be eliminated to enable distance education to make use of modern technologies. The nature of digital distance education for instance, where the goal is to permit instruction to take place anywhere, makes this limitation (i.e. classroom requirement) conceptually and practically obsolete.

Additionally, in order to avoid problems and confusions, it is imperative not only to arouse copyright sensitivity and consciousness to distance educators but also familiarise them with copyright laws. Needless to say, this must entail provision to distance educators with training concerning copyright and the law. A basic understanding of copyright is thus important in order to ensure that compliance is accomplished. Equally important,

institutions should provide informational materials regarding copyright to faculties, students, and relevant staff members that accurately describe and promote compliance with copyright law; and provide notice to students that materials may be subject to copyright protection. Guidelines within which distance educators can reproduce copyrighted materials without fear of being sued or prosecuted should as well be developed. In this regard, participatory approach involving copyright owners and all stakeholders should be preferred. This will enhance much understanding, certainty and achievement of not only compliance with copyright requirements but also identify maximum opportunities for the institutions to lawfully pursue their academic objectives.

In case of doubt as to the application of the exemptions, it is advisable to look for licence. Although, that may be seen as expensive and time consuming, it may serve distance education institutions from controversy and tedious yet costly litigation.

It is suggested that in future the reform and improvement of the law should adopt participatory approach which will involve copyright owners, and all stakeholders like research and educational institutions, libraries, resource and documentation centres and students.

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